

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 1563 of 2003****For Approval and Signature:****HONOURABLE MR.JUSTICE AKIL KURESHI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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KIRANBHAI BALUBHAI MAKWANA - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :

MR DIPAK R DAVE for Appellant(s) : 1,
MR IM PANDYA, AGPP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**Date : 30/03/2006****ORAL JUDGMENT**

1.In this appeal, the appellant has challenged the judgment dated 12th December 2003 rendered by the Additional Sessions Judge, Fast Track Court No.2,

Bharuch in Special Atrocity Case No.71 of 2000.

2. One Smt. Ramilaben Fatehsinh had lodged a complaint before Umalla Police Station in Taluka Jhagadia, Dist: Bharuch against the appellant and three other accused levelling allegations constituting offences punishable under sections 323, 326, 354, 504 read with 114 of the Indian Penal Code as also under section 135 of the Bombay Police Act and under the provisions contained in Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

3. Broadly stated, it was the case of the complainant that on 26th August 1999 when she along with Champaben were going in village Kakalpor at about 12.30 in the afternoon, the accused persons called them and tried to molest them. When they were trying to molest the girls, they had started shouting. Upon hearing the shouts, Babarbhair, Mangalbhair, Jayantibhai and Bhavanbhair had rushed to the spot and started admonishing the accused persons. The appellant herein, viz. Kiranbhair then took out a Rampuri knife from his pocket and assaulted Mangalbhair by giving a blow on the right side of his upper body. His brother intervened, upon which the other accused persons gave stick blows and hit Jayantibhai with stick. Kiranbhair also tried to give a

knife blow to the complainant, but she moved away due to which she received minor injuries on her abdomen. With these allegations, a complaint was lodged before the Police Station at 3.30 p.m. On 26th August 1999.

4.The injured person, viz. Mangalbhai was first treated by the Medical Officer, Health Centre, Umalla. After preliminary treatment, he referred the case for further treatment upon which the injured person was taken to General hospital, Bharuch where he was treated by Dr.Ashokkumar Parmanand Gupta, who was the Medical Officer at the said hospital. In the meantime, the Medical Officer at Health Centre, Umalla sent yadi to the Police Station upon which further steps were taken to investigate the offence. Both these doctors had given their medical certificates which were produced during the course of the trial. Dr.Ashokkumar Gupta was examined by the prosecution. He confirmed that there was injury on Mangalbhai on the right outer side of his chest near the arm-pit. The injury was described as wound of 2.5 c.m. X 2 c.m. and was having depth till the cavity of the chest. On account of the injury, tenth rib of the injured was fractured. Dr.Gupta had given his certificate of the injuries received by the injured person which was exhibited

during the course of the trial.

5.The prosecution had examined the complainant Ramilaben at Ex.55. The injured person Mangalbhai Chotabhai Vasava was also examined at Ex.52. Both these witnesses were eye-witnesses. One more eye-witness Champaben who was with the complainant at the time of the incident was also examined at Ex.57.

6.The learned Additional Sessions Judge after examining the evidence on record came to the conclusion that against the appellant accused No.1, there was sufficient evidence to drive home the charge of having committed offences under section 324 and 326 of the Indian Penal Code. He was, therefore, ordered to undergo rigorous imprisonment for a period of one year for the offence under section 324 of the Indian Penal Code and to pay fine of Rs.1,000/- and further to undergo imprisonment for a period of one month in default of payment of fine. For offence punishable under section 326 of the Indian Penal Code, the appellant-accused was sentenced to undergo rigorous imprisonment for a period of 5 years and pay fine of Rs.2,000/- and to suffer further imprisonment of three months in default of payment of fine. Both the substantive sentences were required to be run

concurrently. Remaining accused persons were found guilty of committing offence under section 323 of the Indian Penal Code. They were, though ordered to undergo imprisonment for a period of one month, given benefit of probation. Accused No.1, has therefore, filed the present appeal challenging the conviction and sentence recorded by the learned Additional Sessions Judge by the impugned judgment dated 12th December, 2003.

7.Learned advocate Shri Deepak Dave and learned APP Shri IM Pandya for the State have taken me through the material on record. I have examined the judgment rendered by the learned Sessions Judge. I have also perused the depositions and the documentary evidence on record. Learned advocate Shri Dave for the appellant during his oral submissions focused mainly on the aspect of quantum of punishment. Even otherwise, I find that there is no scope for interference with the conclusion of the learned Additional Sessions Judge regarding the guilt of the appellant. In so far as the conviction of the appellant is concerned, I do not find that the learned Sessions Judge committed any error.

8.The learned Sessions Judge had examined all aspects of the matter with special focus on the oral evidence of the eye-witnesses. Complainant Ramilaben had given a

detailed account before the Police which was repeated before the Court in her oral evidence. No major contradictions were extracted by the defence. Her sister and eye-witness who was with the complainant at the time when the incident took place, namely, Champaben was also examined by the prosecution. She had also given similar account of the incident. In her cross-examination also no major contradictions have been noticed. Injured eye-witness Mangalbhai Chotabhai Vasava was also examined at Ex.52 before the Sessions Court. He also gave similar kind of statement. He stated that on the date of the incident, for the purpose of Rakshabandhan, his daughters Champaben and Ramilaben were coming to his house for tying "rakhee" to their brothers. At that time, the accused persons including the appellant herein had tried to molest them. In the ensuing scuffle, the noise created was heard by him while he was working in his vada. He, therefore, rushed to the spot and asked the accused persons not to molest his daughters. Upon which the appellant accused No.1 got enraged and hit him with a Rampuri knife on right side upon which he had fallen down on the ground. Shortly, his son Jayantibhai arrived who was assaulted by the other accused with

sticks. Thereafter, Bhavanbhai came upon which the accused persons went away giving abuses. He was shifted to Umalla hospital for treatment from where he was taken to Bharuch General Hospital. In his cross-examination, there are no material contradictions. It may, however, be stated that in the cross-examination, he clearly stated that he and the accused persons reside in the same mohalla and that they are not having good relations since 8 to 10 years. He also admitted that two to three years before the date of the incident, he had a quarrel with one Dineshbhai Bapuji, one of the co-accused in relation to which police cases were filed and the cases were heard by the Jhagadia Court. The defence could also extract from him that there were criminal cases between the victim side and some of the relations of the accused persons.

9. Dr. Ashokkumar Gupta who was examined at Ex.36 has also supported the prosecution version in his deposition. He stated that he had treated the injured Mangalbhai on 26.8.99. He had received stab wound injury on the right side of his chest. He described the nature of injuries and its seriousness. He stated that such injury could have been caused by a sharp edged weapon. He agreed that such injury could have been caused by the muddamal

article No.4 which was a knife alleged to have been used by the appellant-accused No.1. In the cross-examination, he denied that such injury could have been caused on account of fall if the person had fallen down while running.

10.All these accounts point to only one unescapable conclusion, namely that of the guilt of the appellant. Before the learned additional Sessions Judge, there was no material to disregard and discard the consistent statements of as many as three eye witnesses which were amply supported by the medical evidence. In my view, therefore, the Sessions Court committed no error in concluding that the charges against accused No.1, appellant herein for the offence punishable under sections 324 and 326 of the IPC are duly proved.

11.The question of quantum of punishment requires a closer scrutiny. The appellant was aged about 20 years at the time when the incident took place. Though there is suggestion that he also tried to assault complainant Ramilalben with knife, who escaped with minor injuries since she ducked the blow, this allegation remains more or less in the realm of assertion without there being any concrete evidence in support thereof. In that view of the matter, on the available material on

record, it would emerge that the appellant had given one blow to the father of the complainant when he had intervened in the scuffle when he had rushed to the spot upon hearing the shouts of his daughters. Admittedly, there was bad-blood between the complainant side and the accused and his family members. Father of the complainant i.e. injured witness had in no uncertain terms admitted before the Sessions Court that there is old animosity between the two sides. There were cross criminal cases filed against the parties on more occasions than one. Considering the young age of the appellant convict on the date of the incident, considering the history of animosity between the families of both the sides and considering the fact that he had given one blow not intending to be on any vital part of the body in the heat of the moment, I find that this is a fit case where the sentence ordered to be undergone should be reduced.

12.The learned Sessions Judge, as noted earlier, had provided for two different sentences. For offence punishable under section 324 of IPC, rigorous imprisonment for the period of one year was imposed while for the offence punishable under section 326 of IPC, rigorous imprisonment for a period of five years

was imposed. Both the sentences are to run concurrently. In the facts of the present case, therefore, I find that the ends of justice would be served if the sentence of five years imposed for the offence under section 326 of IPC is reduced to that of three years.

13. Accordingly, by modifying the judgment of the learned Additional Sessions Judge, Fast Track Court No.2, Bharuch, dated 12th December, 2003, it is provided that though the conviction against the appellant is upheld, sentence for offence under section 326 of the IPC is reduced to rigorous imprisonment for a period of three years. Rest of the judgment and order remains as it is. Appeal is partly allowed accordingly.

(Akil Kureshi, J.)

(vjn)